THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 20088 OF 1996

Date: 19.01.2007

Between:

The Management of Sirpur Paper Mills Ltd, Sirpur Kagaznagar, Adilabad District.

... Petitioner

and

The Chairman Industrial Tribunal-cum-Labour Court, Godavarikhani and another.

...

Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 20088 OF 1996

ORDER:

Aggrieved by the award of the Industrial Tribunal-cum-labour Court, Godavarikhani in I.D. No. 139 of 1991 dated 10.06.1996, the present writ petition is filed by the employer.

The second respondent-workman was issued charge sheet dated 19.09.1981 wherein several charges were levelled against him. He submitted his explanation thereto on 21.09.1981. An enquiry was held and, on receipt of the enquiry report, the disciplinary authority issued a show cause notice on l6.03.1982 to which the second respondent submitted his reply on 23.03.1982. Thereafter the disciplinary authority imposed on the second respondent workman the punishment of dismissal from service.

Aggrieved thereby the second respondent approached the Industrial Tribunal under Section 2-A(2) of the Industrial Disputes Act. The Tribunal upheld the validity of the domestic enquiry. With regards the charges levelled against the workman the Tribunal, on re-appreciating the evidence on record, came to the conclusion that the only material on record to hold the second respondent guilty of the charge was with respect to his asking the other workmen to stop the machines in order to secure bonus,

distributing pamphlets and in asking the other workers to go on strike. The Tribunal held that the material on record was sufficient only to prove the charge relating to clause 21(ix), of the Standing Orders of the Company, which relates to participation or incitement of others to take part in activities detrimental to the company's interest. The Tribunal, however, held that such a charge held established was not serious enough to warrant imposition of punishment of dismissal from service. An award was passed substituting the punishment imposed to one of "censure". The petitioner was directed to reinstate the 2nd respondent with continuity of service, with attendant benefits in respect of the increments only, and without backwages.

While Sri S. Ravindranath, learned Counsel for the petitioner, would submit that it is not for the labour Court to go into the question as to whether the evidence let in the departmental enquiry was sufficient to hold the charge to have been established or not, on being pointed out that this Court, under Article 226 of the Constitution of India, would not sit in appeal over the findings of fact recorded by the Industrial Tribunal or re-appreciate the evidence on record to come to a different conclusion, learned Counsel would restrict his submissions only to the quantum of punishment. Learned Counsel would submit that for the charge held established of inciting other workmen to go on strike and to stop the mill, the punishment of "censure" was extremely lenient. Learned Counsel would submit that, while exercising jurisdiction under Section 11-A of the Industrial Disputes Act, it is not for the Labour Court to interfere in every case of imposition of penalty for

these were all matters in the employer's realm. Learned Counsel would submit that it is only if the Industrial Tribunal/Labour Court finds that the punishment is grossly disproportionate to the charge held established would it be justified in interfering with the quantum of punishment and that in the present case, having held that the charge of inciting other workmen to go on strike and stopping the mill to have been established, the Tribunal had shown misplaced sympathy in imposing such a lenient punishment on the 2nd resondent-workman.

Sri G. Ravimohan, learned Counsel for the 2nd respondent, on the other hand, would submit that the second respondent was not only imposed the punishment of censure but was denied backwages for a period of ten years and that denial of backwages in the present case was also as a measure of punishment. Learned Counsel would submit that, since the Tribunal had exercised its discretion in modifying the order of punishment and in as much as the punishment, as modified by the Industrial Tribunal, in exercise of the powers conferred under Section 11-A of the Industrial Disputes Act was within its jurisdiction, it was not for this Court to interfere under Article 226 of the Constitution of India. While it is true that the Tribunal, under Section 11-A of the Industrial Disputes Act, has the power to examine the nature and extent of punishment imposed by the employer, it should not interfere with the punishment imposed by the employer as a matter of course. It is only when the punishment imposed is so grossly disproportionate to the charges held established would the Tribunal be justified in interfering and in substituting the punishment

imposed by the employer by another. In the present case the charge held established against the second respondent is of asking the other workers to stop the machines in order to secure bonus, distributing pamphlets and asking other workers to go on strike. Such charges held established cannot be held as not to be serious. The Tribunal has shown misplaced sympathy in awarding a lenient punishment of censure and denial of backwages. The award of the Tribunal, to the limited extent it has interfered with the quantum of punishment with respect to charge No.3, is set aside and the matter remanded back for its reconsideration on the quantum of punishment for the third charge held proved. The Tribunal shall hear both sides and pass an award, on the quantum of punishment to be imposed on the second respondent for the third charge held established, in accordance with law. The entire exercise in this regard culminating in passing of the award, shall be completed within a period of four months from the date of receipt of a copy of this order.

Sri G. Ravimohan, learned Counsel for the second respondent, would submit that, since the second respondent is on the verge of retirement, setting aside the award would deny him even the meager amount which he is receiving, pursuant to the interim order of this Court, under Section 17-B of the Industrial Disputes Act. Ends of justice would be met if the petitioner herein is directed to continue to make payment to the second respondent, in accordance with the interim order of this Court, till an award is passed by the Industrial Tribunal.

The writ petition is allowed. However, in the

circumstances, without costs.

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Date: 19.01.2007 RAMESH RANGANATHAN, J

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